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Mr. Gary Shinners
Executive Secretary
National Labor Relations Board 1015 Half Street SE
Washington, DC 20570-0001

Re: Inwood Material Terminal, LLC, Employer and
Carlos Castellon, Petitioner, and
United Plant & Production Workers Local 175 P
Case No. 29 RD 206581

Dear Mr. Shinners:

The United Plant & Production Workers Local 175 P, pursuant to Section 102.67 of the Board's Rules and Regulations, requests Review of the Regional Director's Decision and Direction of Election in the above referenced case on the grounds that: (1) the Decision is based on a clearly erroneous substantial factual issue; and because (2) there is a substantial question of law or policy being raised due to the absence of officially reported Board precedent.

The issue here involves whether certain conduct by an Employer and an exchange of written emails constituted sufficient conduct to create a Contract Bar. The material facts are not contested.

The Employer, after shaking hands with the Union representative, created the final document constituting the collective bargaining agreement that was reached in late June, 2017. On July 17, 2017 counsel for the Employer forwarded to Union counsel the Final document to the Union for execution. The only blank in the document was insertion of an amount representing "working dues," (a non mandatory subject of bargaining), to be deducted from workers wages pursuant to a lawful union security clause; the amount of which had been set forth in prior contract drafts by the Employer. (Union Exhibit 6)

The Union filled in the amount of Working Dues that had previously been discussed; signed the final collective bargaining agreement presented by the

Employer; and delivered it to the Employer's attorney requesting that it be counter signed. On July 19, 2017, via email, Union Counsel asked when the Union might expect a signed copy back from the Employer. The Employer's Counsel responded stating: "It is effective July 17- I will send as soon as I receive." (Union Exhibit 7)

On July 26, 2017 Union Counsel once again asked when the Union would receive a signed copy of the Agreed upon agreement presented by the Employer that the Employer had acknowledged was "effective July 17." Union counsel specifically asked if the Employer was reneging on its agreement. (Union Exhibit 8)

The Employer, this time by its owner, Billy Haugland II, specifically responded: "Please just let them know I have been away and will complete the last **technicality** as soon as I physically can. **There is no reneging taking place."** (Union Exhibit 8, emphasis added)

Although Haugland was available shortly after the "no reneging" email to the Union's attorney; he simply did not take action on the last "technicality;" instead choosing to ignore the collective agreement he offered and which the union accepted.[1]

The Regional Director determined that the actions of the Employer, in offering up the final draft of the agreed upon terms of agreement; in a written email signed by the Employer's Attorney; and the Union's subsequent, immediate signed acceptance thereof; did not constitute the type of exchange of a signed written proposal and a signed written acceptance that would constitute a contract bar. [See, *Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce,* 225 NLRB 1092 (1976)(where the Employer's signed cover letter {in this case an email forwarding the contract} and the Union's signature on the document satisfied the signing requirement of the Board's contract-bar rules.]

The factual issue here erroneously decided by the Regional Director is whether the email forwarding the final agreement constituted either a signed agreement; or an offer of an agreement; which was immediately signed by the Union with the expectation that an agreement had been entered into. If that was the case then the Union's continued request that the owner himself sign the document simply was, as expressed by the owner, simply a technicality.

The substantial question of law or policy here is whether an employer can offer a final contract; continually advise that we have a contract; reaffirm the

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[1] Additionally, there being no issue that a contract had in fact been agreed upon and entered into the Employer implemented, on or about August 15, 2017, at the union's request, the 3% wage increase due the workers retroactive to July 17, 2017 (Union Exh. 10) That wage increase, having been implemented due to the agreement, now in the processing of the election looks and feels like the employer voluntarily gave workers an increase so they do not need a union to negotiate increases for them.

effective date and implement substantial aspects of the agreement; and advise in writing there is no reneging going on; and then have the Board find that no contract bar exists months later when, to the day, on the one year anniversary from the Union's Certification, the Employer's employees file a decertification petition. In essence, the Employer lied to the Union and stalled putting a physical signature on the specific document, after its lawyers offered the contract in writing; reaffirmed its existence in writing that it was a done deal; and the Regional Director's decision affirms that conduct on the part of the Employer. There does not appear to be any board precedent that specifically delineates what facts constitute a clear and convincing showing that a Contract was entered into that would constitute a Bar short of a signature from both parties on the contract itself.

Going forward, in future matters, when there are negotiations for a first agreement, (or otherwise), and the parties reach an agreement; all an employer need do is what was done here - - stall, stall, stall; lie; reaffirm there is a contract in place; and that it will sign when they come back from being away; and then renege at the last minute to allow a Petition to be filed. The Decision of the Regional Director under these facts reaffirms bad behavior and does nothing to further the purposes of the Act; either for workers, Unions or Employers. It undermines the relationships and professionalism between lawyers on both sides of the table when these antics by an Employer are affirmed. In fact, it fosters bad faith in collective bargaining causing distrust and chaos in the labor arena; which opens the door to labor unrest. Not a sought after goal in the field of labor relations. If there are going to be <u>exceptions</u> to the absolute requirement of a document on its face being signed by both parties, (which exceptions apparently exist), the Board should delineate, in todays world, whether emails between parties constitute such a signature; and whether the totality of the content in emails exchanged in this case rise to the level of establishing a contract bar.

Respectfully submitted,
s/Eric B. Chaikin
Eric B. Chaikin, Esq.

Cc: Aislinn McGwire, Esq., attorney for IMT
Regional Director, Region 29, NLRB